HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 10014526-1

(HDP#6215-000039/US)

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Daniel E. FORD et al.

Confirmation No.: 3479

Application No.: 10/082,245

Examiner: Jeffrey R. SWEARINGEN

Filing Date: Feb. 26, 2002

Group Art Unit: 2145

Title: REMOTE INFORMATION LOGGING AND SELECTIVE REFLECTIONS OF LOGGABLE INFORMATION

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 11, 2006.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(X) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

(X)	one month	$120.00
( )	two months	$450.00
( )	three months	$1020.00
( )	four months	$1590.00

Check in the amount of $120.00 is enclosed.

( ) The extension fee has already been filled in this application.

( ) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of **$500.00**. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

( ) I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450. Date of Deposit:_____

OR

( ) I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number_____ on _____

Number of pages:

Typed Name: (HAND CARRY)

Signature:_____

Respectfully submitted,

Daniel E. FORD et al.

By Thomas S. Auchterlonie

Thomas S. Auchterlonie

Attorney/Agent for Applicant(s)
Reg. No. **37,275**

Date: **Oct. 16, 2006**

Telephone No.: (703) 668-8000

Rev 12/04 (Aplbrief)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT:	Daniel E. FORD et al.	CONF:	3479
SERIAL NO.:	10/082,245	GROUP:	2145
FILED:	February 26, 2002	EXAMINER:	Jeffrey R. Swearingen
FOR:	REMOTE INFORMATION LOGGING AND SELECTIVE REFLECTIONS OF LOGGABLE INFORMATION		

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Mail Stop Appeal Briefs - Patents

October 16, 2006
(October 15th Being a Sunday)

Sir:

This is an Appeal Brief in response to the non-Final Rejection mailed April 11, 2006, of Claims 1, 4-10, 24-26 and 33-35. A Notice of Appeal from this Final Rejection was timely filed on July 11, 2006. Concurrently but separately filed is a transmittal letter that includes an authorization to charge Deposit Account No. 08-2025 for the requisite governmental fee for the filing of an Appeal Brief.

10/17/2006 SDENBOB1 00000022 10082245
01 FC:1251 120.00 OP

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST

The real party in interest is The Hewlett-Packard Company ("HP"). The application is assigned to the Hewlett-Packard Development Company, L.P. ("HPDC"). Originally, the application was assigned from the inventors to HP, as evidenced by the Assignment recorded at Reel 013050, Frame 0666. Then, the application was assigned from HP to HPDC, as evidenced by the Assignment recorded at Reel 013776, Frame 0928. It is noted that HPDC is a wholly-owned subsidiary of HP, thus making HP the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

Appellant's legal representative and Assignee are aware of no appeals which will directly effect or be directly effected by or have any bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

As set forth in the non-Final Office Action mailed April 11, 2006, claims 1, 4-10, 24-26 and 33-35 stand rejected. Of those, Claims 1, 10 and 24 are written in independent format.

It is the non-Final rejection of claims 1, 4-10, 24-26 and 33-35 that is hereby being appealed. A clean copy of the appealed claims (in the context of the other pending claims) is attached in the Claims Appendix.

IV. STATUS OF AMENDMENTS

Some of the claims were amended as recently as the Amendment under 37 C.F.R. §1.114 filed January 27, 2006. The January 27th Amendment has been entered into the record, as is evidenced by the non-Final Office Action being responsive to the January 27th Amendment (see Item No. 1 on Summary page of non-Final Office Action). No amendments have been filed

since the January 27th Amendment. Accordingly, no Amendments have been filed after the July 11, 2006 Notice of Appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

An example embodiment of the present invention corresponds, e.g., to the machine-implemented (e.g., 102A, Paragraphs ("PGHs") 21-22) method of claim 1 for logging information. Such machine-implemented steps as in claim 1 comprise: receiving (e.g., PGH 9; block 302 FIG. 3, PGH 28) a notice of locally-originated loggable information; selectively making (e.g., block 314; PGH 29) an entry in a local log (e.g., 110A, 110B; PGHs 22-23) regarding said information according to a first criterion (e.g., block 308; PGHs 28-29, 33); and selectively making (e.g., block 316; PGH 30) an entry in a remote log (e.g., 110G, PGH 25) regarding said information according to a second criterion (e.g., block 310; PGHs 30, 33) different than the first criterion.

Another example embodiment of the present invention corresponds, e.g., to the machine-implemented (e.g., 102A, PGHs 21-22) method of claim 10 for logging information. Such machine-implemented steps as in claim 10 comprise: receiving (e.g., PGH 9; block 302 FIG. 3, PGH 28) a notice of locally-originated loggable information; determining (e.g., block 308; PGHs 28-29, 33) whether said information satisfies a logging criterion; making (e.g., block 314; PGH 29) an entry, where said logging criterion is satisfied, in a local log (e.g., 110A, 110B; PGHs 22-23) for the information corresponding to said notice; determining (e.g., block 310; PGHs 30, 33) whether said information satisfies a reflection criterion different than said first criterion; and notifying (e.g., block 316; PGH 30), if said reflection criterion is satisfied, a remote logger service (e.g., 106, PGH 22) of said information.

Another example embodiment of the present invention corresponds, e.g., to the apparatus (e.g., FIG. 10, PGH 21) of claim 24. Such an apparatus as in claim 24 comprises: an input/out device (e.g., 104, PGH 22) operable to receive (e.g., PGH 9; block 302 FIG. 3, PGH 28) notices of locally-originated loggable information; a first processor operable to receive the notices from the I/O device (e.g., 106, PGH 22); the first processor further being operable to selectively making (e.g., block 314; PGH 29) an entry in a local log regarding said information according to a first criterion (e.g., block 308; PGHs 28-29, 33); and a second processor (e.g., 120, PGHs 24-25) operable to selectively make (e.g., block 316;

PGH 30, 33) an entry in a remote log regarding said information according to a second criterion (e.g., block 310; PGHs 30, 33) different than the first criterion.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There are two rejections. Appellant requests the Board to review on this appeal both of the rejections, namely the first rejection (beginning on page 3 of the non-Final Office Action) of claims 1, 4-10, 24-25 and 33-35 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,857,190 ("the '190 Patent") to Brown, and the second rejection (on page 5 of the non-Final Office Action) of claim 26 under §103(a) as being unpatentable over the '190 patent in view of U.S. Patent No. 6,381,712 to Nemitz ("the '712 patent").

VII. ARGUMENTS

Initially, Appellant submits that claims 1, 4-10, 24-25 and 33-35 stand or fall as a group, and that claim 26 stands separately the group.

Below are arguments traversing the two rejections.

A. §103(a) Rejection, '190 Patent Taken Alone, Claims 1, 4-10, 24-25 and 33-35

Below are arguments traversing the first rejection.

i) What the '190 Patent Is

The '190 patent is directed toward a system for logging events in a cable-television distribution network. In Fig. 1 of the '190 patent, a set-top box or user interface unit 26 (locally connected to a user's television) is connected via a distribution network 28 to a centralized computer or headend 22. In Fig. 1, headend 22 is remote relative to user interface unit 26.

An event evaluator 52 within user interface unit 26 evaluates events occurring at the user interface unit 26 and determines whether each such event is loggable; see col. 6, lines 65 to col. 7, line 1. If so, then event evaluator 52 reports the events to event log manager 56 located within headend 22; see col. 7, lines 15-20. No logging of events occurs at user interface unit 26. Making entries in a local log regarding such events, however, does not occur at user interface unit 26, i.e., no logging takes place that is local to user interface unit 26. Rather, logging takes place only remotely (relative to user interface unit 26) via event log manager 56 at log database 62 in headend 22.

Events can be reported to event log manager 56 as they are evaluated. Or, multiple events can be temporarily stored (buffered) in event buffer 34 (located within user interface unit 26) and then reported in a batch; see col. 7, lines 55-67. But it should be understood that buffering an event is not the same as logging the event.

ii) WHAT THE '190 PATENT IS NOT

On page 4 of the Office Action, the Examiner acknowledges that, while disclosing remote logging, the '190 patent fails to explicitly disclose that logging can be performed locally. However, the Examiner goes on to assert (Office Action page 3), "Brown discloses logging, but ... are logged (column 5, lines 37-40), ... ". Again, this is traversed.

It is helpful to consider what literally is stated in the passages relied by the Examiner. Lines 32-33 from column 7 of the '190 patent are relied upon by the Examiner to support his assertion that the '190 patent "states" that the components of the event system can be distributed over the entertainment network system. Lines 26-33 of column 7 are reprinted as follows.

[Lines 26-32]

> A forwarding registry 58 is utilized by the event evaluator 52 to locate the event log manager 56 at the headend, thereby alleviating the need for the event evaluator [52] to know where the log manager 56 is physically and actually

> residing at the headend. The fowarding [*sic*, forwarding] registry 58 is shown in the communication path from the user interface unit to the headend.
>
> **[Lines 32-33]**
>
> It can be is [*sic*] located at the headend, or have components distributed over the entertainment network system.

In lines 32-33, "it" refers to forwarding registry 58. The above-quoted passage also makes clear that event evaluator 52[1] uses forwarding registry 58 to locate event log manager 56.[2]

The above-quoted passage, however, does not teach that components in general of the event system can be distributed over the entertainment network system. The Examiner has overestimated the above-quoted passage. Rather, it is limited to being a statement that forwarding registry 58 can have components distributed over the entertainment network system.

Lines 46-53 from column 7 of the '190 patent are relied upon by the Examiner to support his assertion that events can be forwarded to an alternate location. In lines 46-53, the '190 patent teaches that the event information can be forwarded to an entity other than event log manager 56. The example given of such another entity is a diagnostic system, which presumably has a location different than the location of the event log manager 56.[3]

Lines 43-45 from column 5 of the '190 patent are relied upon by the Examiner as a teaching of a locally-based event evaluator for screening the events. Inspection of lines 43-45 reveals that event evaluator 52 is concerned merely with whether events are loggable or not.

---

[1] Again, event evaluator 52 is an entity that is local, i.e., within user interface unit 26, but is not itself a logger of events.

[2] Again, event log manager 56 is an entity that is remote, i.e., within headend 22, and that itself is a logger of events into log database 62 (which is also located in headend 22).

[3] The statement within lines 46-53, namely "alternatively forward the event information to a location other than the event log manager" (underlined emphasis added) carelessly uses "location" to refer to the other entity. The skilled artisan would have understood that the location is typically different only because the alternate entity is typically going to be found somewhere other than where event log manager 56 is found. The careless statement (contrary to what the Examiner seems to be implying) is not a teaching that event log manager 56 itself can be put in other locations.

That is, lines 43-45 do not represent a teaching that events are locally logged. This is consistent with Appellant's previous explanation that event evaluator 52 does not perform local logging.[4]

Lines 37-40 from column 5 of the '190 patent are relied upon by the Examiner as a teaching that the operator can configure where the events are actually logged. Lines 30-42 from column 5 are reprinted as follows (underlined emphasis added).

> **[Lines 30-31]**
> Loggable events are reported to the headend 22 over the distribution network 28 (step 102).
> **[Lines 31-37]**
> The event logging system is designed so that the user interface unit 26 does not need to know the exact location to report the events at the headend [22]. The headend [22] selects an appropriate database to store event information pertaining to the reported events (step 104). An appropriate database is selected based upon the kind of events being logged.
> **[Lines 37-40]**
> The event logging system is also designed to permit the operator to configure where the events are actually logged to promote flexibility in resource allocation.
> **[Lines 40-42]**
> At step 106, the event information is logged in the selected database, which might be located at the headend [22] or another remote location.

The Examiner's reliance upon lines 37-40 conveniently ignores the succeeding sentence of lines 40-42.

iii) '190 PATENT STATEMENT "OR ANOTHER REMOTE LOCATION" MEANS THAT ANY OTHER LOCATION MUST BE REMOTE

The succeeding lines 40-42 state (again, reprinted above) state that the database in which the event information is logged can be located at headend 22 or another remote location.

---

[4] See, the paragraph bridging pages 9-10 of Appellant's Response filed July 28, 2005, which states: "An event evaluator 52 ... in headend 22."

Importantly, lines 40-42 do not merely state that the database can be located at any other location.[5] Rather, lines 40-42 impose a constraint, namely that the other location at which event information can be logged is a remote location.

iv) EXAMINER'S REBUTTAL IGNORES PRESENCE OF WORD "ANOTHER"

In the Rebuttal Arguments presented on page 2 of the Office Action, the Examiner focuses upon lines 40-42 of column 5, stating (**bold** emphasis in original, underlined emphasis added):

> Consideration of context showed that such an alternate logging locating **might** be remote. The skilled artisan would recognize that if a database could be located remotely for storing information, then it could also be located locally.

Essentially the Examiner has omitted the term "another" from his interpretation of the phrase "or another remote location," i.e., he reasons as if the phrase "or another location" had been recited. What context supports the Examiner's revisionist reading of the phrase? It cannot be the preceding sentence of lines 37-40 (again, reprinted above), which merely states that the operator can configure where the events are actually logged. Lines 37-40 teach that there is some flexibility in the selection of where the events are actually logged. But lines 37-40 do not go so far as to be a teaching of there being unbounded flexibility.

v) OBVIOUSNESS STANDARD: WOULD, NOT COULD, HAVE BEEN MADE

The Examiner's rebuttal statement (underlined emphasis added) "if a database could located remotely ..., then it could also be located locally" reveals the impermissible degree to which hindsight is being employed. The standard of obviousness is not what could have been made by the skilled artisan in view of the applied references, but what would have been made.[6]

---

[5] The use of the adjective "another" also reinforces that headend 22 is at a remote location.

[6] See, e.g., MPEP §2143.01(II) ("Fact That Reference Can Be Combined Or Modified Is Not Sufficient To Establish Prima Facie Obviousness").

vi) EXAMINER'S RATIONALE IMPROPER AS MERELY "COULD HAVE BEEN MADE"

The skilled artisan would not have omitted the adjective "another" from lines 40-42, i.e., would not have ignored the context. Rather, the skilled artisan would have recognized (from the context) and respected the constraint taught by the '190 patent, namely that any other location for the database must be remote.

If context is not ignored, then the Examiner's obviousness rationale falters. Admittedly, the '190 patent gives a motivation for an alternate logging location, but consideration of context shows that such an alternate logging location must be remote. The '190 patent plainly does not teach that the alternate logging location can be local. As such, a distinction over the '190 patent of independent claim 1 is selectively making an entry in a local log. Assuming for the sake of argument that the skilled artisan would have been motivated to adapt the '190 patent in some manner, the result would not have included local logging.

Independent claim 10 recites a distinction similar to that of claim 1 and thus similarly distinguishes over the '190 patent. Claims 4-9, 24-25 and 33-35 depend from claims 1 and 10 and thus exhibit at least the same distinction, respectively.

In view of the foregoing discussion, the §103(a) rejection is improper at least because it amounts to no more than a "could have been made" rationale rather than a "would have been made" rationale.

B. §103(A) REJECTION, '190 PATENT + '712 PATENT, CLAIM 26

Claim 26 depends indirectly from claim 1 and so distinguishes over the '190 patent at least for the same reason as given above regarding claim 1. The '712 patent fails to make up for the shortcomings of the '190 patent. Essentially, the rationale for rejecting claim 26 is the same improper "could have been made" rationale as has been put forth regarding the first rejection (of claims 1, 4-10, 24-25 and 33-35), discussed above. Thus, claim 26 distinguishes over the combination of the '190 patent and the '712 patent. In view of the foregoing discussion, the §103(a) rejection is improper.

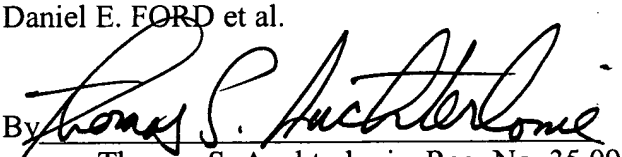
VIII. CONCLUSION

A proper obviousness rationale explains why the skilled artisan would have made the claimed invention, not why he could have made the invention. Appellant has explained above how the appealed rejections amount only to "could have" rationales, not "would have" rationales, which renders the rejections improper. Appellant accordingly requests the Board to reverse the rejection and remand the application to the Examiner for preparation of a Notice of Allowance or a non-Final Office Action.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

Daniel E. FORD et al.

By 

Thomas S. Auchterlonie, Reg. No. 35,094
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

TSA/cm:tsa

CLAIMS APPENDIX

Claims 1, 4-10, 24-26 and 33-35 on Appeal:

1. A machine-implemented method of logging information, machine-implemented steps of the method comprising:

receiving a notice of locally-originated loggable information;

selectively making an entry in a local log regarding said information according to a first criterion; and

selectively making an entry in a remote log regarding said information according to a second criterion different than the first criterion.

2. (Canceled Previously).

3. (Canceled Previously).

4. The method of claim 1, wherein said step of selectively making an entry in a remote log is contingent upon said first criterion having been satisfied.

5. The method of claim 1, wherein said first criterion and said second criterion are respective levels of information priority.

6. The method of claim 5, wherein:

a scheme of said information priority assigns smaller numbers to higher priority information and larger numbers to lower priority information, the highest priority information having priority number zero; and

the first criterion is that an information must be lower in priority number than a first predetermined value, and said second criterion is that an information must be lower in priority number than a second predetermined value.

7. The method of claim 6, wherein said second predetermined value is smaller than said first predetermined value.

8. The method of claim 1, wherein said remote logger includes a storage area network ("SAN") as part of a communication path thereto.

9. The method of claim 1, wherein said first criterion is a level of information priority.

10. A machine-implemented method of logging information, machine-implemented steps of the method comprising:

receiving a notice of locally-originated loggable information;

determining whether said information satisfies a logging criterion;

making an entry, where said logging criterion is satisfied, in a local log for the information corresponding to said notice;

determining whether said information satisfies a reflection criterion different than said first criterion; and

notifying, if said reflection criterion is satisfied, a remote logger service of said information.

11-23 (Canceled Previously).

24. An apparatus comprising:

an input/out device operable to receive notices of locally-originated loggable information;

a first processor operable to receive the notices from the I/O device;

the first processor further being operable to

selectively making an entry in a local log regarding said information according to a first criterion; and

a second processor operable to selectively make an entry in a remote log regarding said information according to a second criterion different than the first criterion.

25. A computer-readable medium having code portions embodied thereon that, when read by a processor, cause said processor to perform the method of claim 1.

26. The computer-readable medium of claim 25, wherein said code portions are configured to adhere to JINI distributed computing technology or JCORE distributed computing technology.

27-32 (Canceled Previously).

33. The method of claim 10, wherein the step of selectively making an entry in a remote log is contingent upon the logging criterion having been satisfied.

34. The method of claim 10, wherein said logging criterion and said reflection criterion are respective levels of information priority.

35. The method of claim 10, wherein said remote logger includes a storage area network ("SAN") as part of a communication path thereto.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE